even against the militant opposite."). For just these reasons Thomas Jefferson, whose views on the subject helped shape the Constitution's religion clauses, wrote that the "protection of opinion" in the Virginia Act for Establishing Religious Freedom "was meant to be universal • • •, to comprehend, within the mantle of its protection, the Jew and the Gentile, the Christian and Mahometan, the Hindoo, and infidel of every denomination." T. JEFFERSON, *Autobiography*, in 1 THE WRITINGS OF THOMAS JEFFERSON 62 (P. Ford ed. 1892).

In derogation of these foundational principles, Chesterfield has adopted a policy of exclusion. Because the Board's invocations "are traditionally made to a divinity that is consistent with the Judeo-Christian tradition," it has declared that practitioners of religions that "invoke[ ] polytheistic, pre-Christian deities" (Pet. App. 32) may not deliver invocations. If there were any doubt that this policy constitutes official disapproval of minority religious beliefs, it was dispelled by the reactions of members of the Board. One supervisor has been quoted as saying of petitioner's religion that "[i]t is a mockery. It is not any religion I would subscribe to." Pet. App. 17 n.4. And the then-chairman of the Board testified in his deposition: "I believe this nation was intended to be a Christian nation. • • • Only in the years subsequent in the judicial theater have we come to expand and go beyond that." C.A. J.A. 270.

By preferring "Judeo-Christian" religions to all other religions, the County has sent an unequivocal "message to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community." *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O'Connor, J., concurring). The Establishment Clause condemns this form of exclusion.

Though the County argues that its list of leaders eligible to deliver legislative prayers "guarantee[s] broad representation" (Opp. 13), in fact it differentiates between those citi-

zens whose religions are part of their self-defined concept of the American tradition and those citizens whose religions are not. As Justice Kennedy has observed, "[j]ust as the government may not segregate people on account of their race, so too it may not segregate on the basis of religion. The danger of stigma and stirred animosities is no less acute for religious line-drawing than for racial." *Board of Educ. of Kiryas Joel Village Sch. Dist. v. Grumet*, 512 U.S. 687, 728-729 (1994) (Kennedy, J., concurring in the judgment).

B. Chesterfield County's Exclusionary Policy Renders Hindus, Buddhists, And Native Americans (Among Others) Second-Class Citizens.

Chesterfield's policy of excluding practitioners of non-Judeo-Christian religions from eligibility to deliver invocations stigmatizes those faiths, which include major world religions such as Hinduism and Buddhism, as well as Native American religions, which comprise the first belief systems practiced on this continent and which form an indispensable part of our national history and culture. In the sections that follow, we supply the Court with enough background about each of these religious traditions to conclude not only that their adherents clearly are second-class citizens under Chesterfield's discriminatory system for distributing the entitlement to deliver legislative prayer, but also that the impact of this form of discrimination is sufficiently deleterious to merit this Court's immediate intervention.

1. Hinduism.

Hinduism is an established world religion that dates back at least to the year 5000 B.C.E,[3] and accordingly pre-dates

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[3] J. GORDON MELTON, ENCYCLOPEDIA OF AMERICAN RELIGIONS 195 (7th ed. 2003). "B.C.E." stands for "Before the Common Era," a religiously neutral phrase that corresponds to the Christian term "B.C.," or "Before Christ." Similarly, "C.E.," or "Common Era," corresponds to "A.D.," or "Anno Domini" ("Year of Our Lord"). The B.C.E./C.E. system uses the same dates as the B.C./A.D. system. See *The 'Common*

Judaism, Christianity, and Islam.[4] There are nearly 900 million Hindus worldwide.[5] As of 2001, about 766,000 Hindus resided in the United States.[6] By 2004, that number had risen to 1,285,000. THE WORLD ALMANAC AND BOOK OF FACTS 602 (William A. McGeveran ed., 2004 ed.). According to Harvard University's Pluralism Project, there are at least 727 Hindu temples in the United States.[7]

Of about twelve Hindu temples in Virginia, three — two in Richmond and one in Glen Allen — are within twenty-five miles of the Chesterfield County Administration Building, where respondent's meetings, and the invocations that precede them, take place.[8] These temples serve hundreds of practicing Hindus; the Glen Allen temple alone had over 180 life members as of March 2005.[9] Chesterfield's policy, and the Fourth Circuit's decision upholding it, send an unmistakable message to these Americans, and others who share their

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Era' — A Secular Term for Year Definition, http://www.bbc.co.uk/dna/-h2g2/A3176345.

[4] D. Killingly, *Hinduism*, in MAJOR WORLD RELIGIONS: FROM THEIR ORIGINS TO THE PRESENT 15 (L. Ridgeon ed., 2003).

[5] See *Hinduism*, MICROSOFT ENCARTA ONLINE ENCYCLOPEDIA (2005), http://encarta.msn.com/encyclopedia_761555715/Hinduism.html.

[6] U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES 2004-2005 55, available at http://www.census.gov/prod/2004-pubs/04statab/pop/pdf.

[7] *Pluralism Project — Statistics by Tradition*, http://www.pluralism.-org/resources/statistics/tradition.php.

[8] Notably, a congregation need not be physically located within the County in order to be placed on the list of religious organizations eligible to have their leaders deliver invocations. The record reflects that the list includes a Baptist church outside the County to which one Board member belongs (C.A.J.A. 214-215), and two synagogues located in Richmond and Colonial Heights (C.A.JA. 234-235).

[9] See *Hindu Center of Virginia: Membership: Life Members*, http://www.hinducenterofvirginia.org.

beliefs, that their faith is not accepted or respected by the larger community.

Because the Board's invocations "are traditionally made to a divinity that is consistent with the Judeo-Christian tradition," it has declared that practitioners of religions that "invoke[ ] polytheistic, pre-Christian deities" (Pet. App. 32) may not deliver invocations. The County's policy thus excludes adherents of Hinduism — which the trial court found to be among the "recognized religions * * * that are not considered to be 'monotheistic' or of the 'Judeo-Christian tradition.'" *Ibid.* Though it is often mistakenly described as "polytheistic," Hinduism is monotheistic.[10] Nonetheless, both Hinduism's approach to monotheism and, more generally, its theology and practices are outside the so-called "Judeo-Christian" tradition.[11] While Hindu sects vary in

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[10] Hinduism postulates a theology of panentheistic monotheism, recognizing "one, all-pervasive supreme God, though He or She may be worshipped in different forms and by different names." Hindu American Foundation, *Short Answers to Real Questions about Hinduism*, http://www.hinduamericanfoundation.org/Content/HinduismInfo/Hintro-_questions.html. This concept is known in Sanskrit as *sama-darshinah*, or "equal vision." THE HOLY GEETA, 313-14, 5:18 (Swami Chinmayananda cmt., trans., n.d.). Hindus do not conceive of God as a specific, single entity separate from other living things; rather, for Hindus, God is omnipresent and within all living things. *Id.* at 230.

[11] The idea of a "common Judeo-Christian tradition * * * did not gain popular support until the 1940s, as part of an American reaction to Nazism and its fascist fellow travelers. * * * [Though] political rhetoric still invokes a common moral umbrella * * * the idea of a common Judeo-Christian tradition is, for the United States at least, already outmoded. 'What we need now to maintain social cohesion,' says Jonathan Sarna, professor of American Judaism at Brandeis University, 'is a new language of inclusion to encompass American Muslims, Buddhists and Hindus.'" Kenneth L. Woodward, *Losing Our Moral Umbrella: Politicians Appeal to a Judeo-Christian Tradition, but Religious Scholars Say It No Longer Exists*, NEWSWEEK, Dec. 7, 1992, at 60. See generally JACOB NEUSER, JEWS AND CHRISTIANS: THE MYTH OF A COMMON TRADITION (1991); ARTHUR A. COHEN, THE MYTH OF THE JUDEO-CHRISTIAN TRADITION (1970).

their specific beliefs, Hindus share certain core beliefs, including the existence of an all-pervasive Supreme Being (God) and many "deities" — understood as manifestations of various aspects of God; *karma*, the belief that each individual creates his own destiny by his thoughts, words and deeds; *dharma*, divine law that illuminates the path of righteousness; *samsara* and *moksha*, the cycle of rebirth and eventual liberation from that cycle; and the authority of the *Vedas* and other revealed scripture.[12]

Hinduism thus has little in common with Judaism or Christianity. At the same time, it shares some notable characteristics with Wicca, the spiritual tradition of petitioner. Both Hindus and Wiccans believe that plants, animals, and other aspects of nature can serve as embodiments of the divine.[13] Of course, there are significant differences between Hinduism and Wicca, but the disparaging statements that the Board's members have made about petitioner's religion cast doubt on their competence to comprehend either religion. Certainly it is not irrational for adherents of the Hindu religion to fear that such religiously intolerant sentiment applies to them as well.

2. Buddhism.

Buddhism originated in about 600 B.C.E., "long before the Christian era." *Cruz v. Beto*, 405 U.S. 319, 322 (1970). By 2003, there were more than 372 million Buddhists worldwide. THE WORLD ALMANAC AND BOOK OF FACTS 734

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[12] See SATGURU SIVAYA SUBRAMUNIYASWAMI, DANCING WITH SIVA: HINDUISM'S CONTEMPORARY CATECHISM 726-727 (5th ed. 1999).

[13] See, *e.g.*, Emily Marden, *The Neem Tree Patent: International Conflict over the Commodification of Life*, 22 B.C. INT'L & COMP. L. REV. 279, 292 (1999) ("[W]ithin the predominant Hindu religion, most animals and trees as well as rivers, lakes and hills, are treated as sacred representations of God."); Dmitry N. Feofanov, *Defining Religion: An Immodest Proposal*, 23 HOFSTRA L. REV. 309, 402 (1994) (noting the centrality of "the Wiccan invocation of 'Mother Earth'").

(William A. McGeveran ed., 2005 ed.). American Buddhism dates back at least to 1853, when the first Buddhist temple was erected in San Francisco. RICHARD HUGHES SEAGER, BUDDHISM IN AMERICA 159 (1999). According to the Pluralism Project, *supra*, about 3 million Buddhists currently attend more than 2,000 Buddhist centers in the United States.

The large and growing American Buddhist population includes American-born converts[14] and foreign-born Buddhists who immigrated to America at a young age. This new generation of Buddhists has created a "uniquely American form" of Buddhism. See Mary Rourke, *Buddhism Takes on a Uniquely American Form as Asian Youths and Westerners Look to the East for Meaning*, L.A. TIMES, Feb. 18, 1997 (noting that America has become a "melting pot" of different Buddhist traditions and practices).

Buddhists disagree with the fundamental tenet upon which the Judeo-Christian tradition is based: namely, the existence of an omnipotent God. Buddhism is non-theistic, denying that there is a distinction between the Creator and creation. See SEAGER, *supra*, at 24-25; ROBERT A.F. THURMAN, ESSENTIAL TIBETAN BUDDHISM 9 (1995). It is based upon the story of Siddhartha Gautama, who sat down one day under a tree and determined not to get up until he had achieved spiritual enlightenment. The next morning, after a series of internal discoveries, Siddhartha had become the Buddha. DONALD S. LOPEZ, JR., THE STORY OF BUDDHISM 37-41 (2001).

A central article of the Buddhist faith is the belief that the Buddha's enlightenment came from inside himself, not from God. THURMAN, *supra*, at 9. Indeed, the concept of "God" as separate from humanity is anathema to Buddhists. *Id.* The spiritual leader of Buddhists, known to his followers as

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[14] In 1997, there were an estimated 100,000 American-born Buddhists in the United States. David Van Biema, *Buddhism in America*, TIME, Oct. 13, 1997, at 72.

His Holiness the Dalai Lama, has said that "supreme wisdom" consists of the realization of the unified nature of reality. HIS HOLINESS TENZIN GYATSO, THE FOURTEENTH DALAI LAMA OF TIBET, OPENING OF THE WISDOM EYE 94 (1966). The Buddha himself warned that the contemplation of "God" leads away from, not toward, enlightenment. MICHAEL CARRITHERS, BUDDHA: A VERY SHORT INTRODUCTION 72 (1983).

Because an invocation based upon the Buddhist faith would not be "made to a divinity that is consistent with the Judeo-Christian tradition," respondent's policy renders Buddhists ineligible to give invocations. The effect is to relegate to second-class status a large group of local residents. Of the 51 Buddhist centers in Virginia, 12 are within thirty miles of the Chesterfield County Administration Building. The nearest of these local centers is a mere six miles away. Several of the centers have congregations numbering in the hundreds; the Richmond Buddhist Association alone, for example, has about 500 members.[15]

Although the indignity of their exclusion is likely to be felt most keenly by local Buddhists, respondent's policy and the Fourth Circuit's ruling have far-reaching implications for all Buddhists, for the message of both is that it is within the power of a local government to declare an entire religion unworthy of respect. Were the Dalai Lama, who is a Nobel Laureate,[16] to apply for the opportunity to give an invocation before the Board, the Board's policy would prohibit even a consideration of his candidacy. Presumably respondent would not argue that a rejection of, for example, the Pope or the Archbishop of Canterbury under similar circumstances would be anything less than an insult to Christianity itself. If the rejection of the one but not the other is acceptable, then it

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[15] *Richmond Buddhist Association: Center Profile*, http://www.pluralism.org/research/profiles/display.php?profile=72571.

[16] The Dalai Lama was awarded the Nobel Peace Prize in 1989. See *The Nobel Peace Prize 1989*, http://nobelprize.org/peace/laureates/1989.

can only be because Buddhism is somehow inherently inferior to Christianity. This is precisely the type of judgment that the government is forbidden, and for excellent reason, to make.

3. Native American Religions.

Native American religions have evolved over a 30,000 to 60,000-year period. AKE HULTKRANTZ, NATIVE RELIGIONS OF NORTH AMERICA 3, 12 (1987). Based upon a 2001 survey, one report estimates that 103,000 Americans identify themselves as adherents of Native American religions.[17]

According to the 2000 Census, 21,172 Native Americans live in Virginia,[18] of whom 851 live in Chesterfield County.[19] There are at least eight recognized Native American tribes in Virginia: the Chickahominy, Eastern Chickahominy, Mattaponi, Monacan Indian Nation, Nansemond, Pamunkey, Rappahannock, and Upper Mattaponi.[20] The Chickahominy tribe is located in Charles City County, which borders Chesterfield County and is only twenty-five miles from Richmond, and the Eastern Chickahominy, Mattaponi, Pamunkey, Rappahannock, and Upper Mattaponi tribes are also located in nearby counties. *Id.* The members of these tribes trace their presence in Virginia to the early seventeenth century and are both central to Virginia's history and active in its current polity.[21]

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[17] STATISTICAL ABSTRACT, *supra*, at 55.

[18] U.S. Census Bureau, *Virginia — Fact Sheet*, http://factfinder.census.gov (search results).

[19] U.S. Census Bureau, *Chesterfield County, Virginia – Fact Sheet*, http://factfinder.census.gov (search results).

[20] See Virginia Council on Indians, *Virginia Tribes*, http://indians.vipnet.org/tribes/index.cfm.

[21] *Ibid.*

While there is no single, unified Native American religion — each tribe has its own tradition — almost all Native American religions conceptualize divinity as intertwined with, and embodied in, nature. "The Judeo-Christian concept of a supreme and immortal deity, belief in whom may be divorced in many respects from any specific situs or mode of worship, is not applicable to many Indian religions. Native American religions view gods, people, and nature as an integral whole."[22]

Hence, for purposes of Chesterfield's policy, Native American religions fall squarely outside of the "Judeo-Christian tradition," rendering their leaders ineligible to give invocations. Just as with American Hindus and Buddhists, the exclusion of representatives of Native American religions from participation in this civic ritual conveys a message of disrespect and second-class citizenship. If permitted to persist, this type of discrimination will lead to the alienation and marginalization of a religious group with older and deeper American roots than any other. In light of their long-standing presence on this continent, Chesterfield County's reliance on historical tradition (see Opp. 18) to exclude Native Americans is ironic to say the least.

C. Allowing Governmental Officials To "Review" Theological Questions Is Anathema To The Establishment Clause.

The marginalization of non-"Judeo-Christian," non-monotheistic religions is far from the only deleterious consequence of Chesterfield's policy and the Fourth Circuit's decision upholding it. That policy, which divides religions on the basis of their tenets, also threatens to entangle government in making theological judgments about the nature of dozens of religions whose adherents populate the county or might move

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[22] Sarah B. Gordon, Comment, *Indian Religious Freedom and Governmental Development of Public Lands*, 94 YALE L.J. 1447, 1448-1449 (1985).

into the county. In this case, the County cited "our review of Wicca" as the basis for refusing to place petitioner on its list of congregations eligible to give invocations. Pet. App. 32. To conduct a similar review and examination of the religions represented by amici, the County would have to interpret potentially competing conceptions of those religions.[23] And in determining the nature of the religion — that is, the extent to which these religions meet the Board's tests of monotheism and consistency with the Judeo-Christian tradition — the County would become hopelessly entangled in analyzing religious doctrine to render its own theological verdict. That is a business in which a government does not belong, especially when doing so in the context of doling out the right to participate in its religious invocation program.[24] It is "wholly inconsistent with the American concept of the relationship between church and state to permit civil courts to determine ecclesiastical questions."[25]

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[23] For example, it has been said that "there is probably no point of belief or doctrine on which all Hindus agree." Benderly, *Religious Life*, in INDIA: A COUNTRY STUDY 135 (R. Nyrop ed. 1985).

[24] Respondent either deems Islam to be within the Judeo-Christian tradition or has created a special exception for it, given that the Islamic Center of Chesterfield County appears on the list of organizations whose clergy are eligible to deliver invocations. See Pet. App. 3. Many adherents of Islam no doubt would be surprised to learn that a government has deemed their beliefs to be consistent with the "Judeo-Christian tradition." Indeed, the Court of Appeals and the District Court took differing views. Compare Pet. App. 50 n.16 (explaining that Islam is "not of the Judeo-Christian tradition") with Pet. App. 19 ("The Judeo-Christian tradition is * * * an umbrella covering many faiths. * * * Chesterfield County has spread it wide enough in this case to include Islam.").

[25] *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 445-446 (1969) (citing *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 728-729 (1872)). As Justice Stevens has explained, there is an "overriding interest in keeping the government — whether it be the legislature or the courts — out of the business of evaluating the relative merits of differing religious claims. The risk that governmental approval of some and disapproval of others will be

D. The Decision Below Threatens To Encourage Other Localities To Engage In Religious Preferences.

In rendering spiritual leaders of non-Judeo-Christian religions ineligible to deliver legislative invocations, Chesterfield's policy marginalizes local followers of minority religions and, by extension, all religious minorities. If the Fourth Circuit's holding is permitted to go unchallenged, governing bodies in other counties and states will feel free to enact similar exclusionary policies. Indeed, one organization has already begun to make use of the decision below in issuing guidelines for city councils on how to offer "sectarian" prayers at their meetings.[26] It is not an exaggeration to say that the rights of millions of members of non-Judeo-Christian religions may be imperiled if this Court upholds the Fourth Circuit's decision.

The threat of widespread religious oppression at the state and local levels is very real. Last year, when Darla Wynne objected to the Great Falls, South Carolina Town Council's practice of opening meetings with appeals to Jesus Christ, she was told that she "wasn't wanted" and that she "should leave town" because she "could possibly be burned out." *Wynne v. Town of Great Falls*, 376 F.3d 292, 295 (4th Cir. 2004), cert. denied, 125 S. Ct. 2990 (2005). Only a few months ago, the Speaker of the Indiana House of Representatives triggered an uproar by instituting proselytizing, sectarian opening prayers. See Dan Carpenter, *Devoutly Passing on a Prayer*, INDIANAPOLIS STAR, June 8, 2005, at 11A. And

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perceived as favoring one religion over another is an important risk the Establishment Clause was designed to preclude." *United States v. Lee*, 455 U.S. 252, 263 n.2 (1982) (Stevens, J., concurring in the judgment).

[26] See Memorandum from John W. Whitehead, President, The Rutherford Institute, to Concerned Parties, Prayer at City Council Meetings: Analysis and Guidelines 5 (Apr. 28, 2005), available at http://www.rutherford.org/PDF/2005.04.29.PDF.

"dozens" of local government meetings in Cobb County, Georgia — in which, according to the commission's chair, "a staff person rotate[s] the members of religious community [who lead prayers] to include all denominations of Christianity, Islam and Judaism" (but presumably no other religions) — have "opened with prayers that referred to Jesus Christ." Bill Rankin & Richard Whitt, *Prayers At Meetings Challenged; Suit: Cobb Commission Shows Bias*, ATLANTA J.-CONST., Aug. 11, 2005, at 1D.

In short, a movement is underway to squeeze minority religions out of our public life,[27] and, unless promptly overturned, the decision below will serve only to fuel that movement. Review is desperately needed to stop this pernicious trend toward religious favoritism before it can do any further damage.

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[27] Indeed, an organization that filed an amicus curiae brief on the County Board's behalf in the Court of Appeals argued that certain minority religions should be treated as outside the bounds of our society:

> Our institutions—of which County Boards of Supervisors are surely one—presuppose *a* Supreme Being. They do not presuppose no Supreme Being and they do not presuppose many Supreme Beings. They presuppose monotheism. Therefore * * * the County is not disparaging any other religion; it is simply operating within the very presuppositions of the society of which it is a part.

Brief for National Legal Foundation as Amicus Curiae Supporting Defendant-Appellant, at 11 (emphasis in original), available at http://www.nlf.net/About/briefs/simpson.nlf.final.pdf.

CONCLUSION

The Court should grant the petition for certiorari and reverse the judgment of the Court of Appeals.

Respectfully submitted.

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SEPTEMBER 2005